

Office Memorandum • UNITED STATES GOVERNMENT

TO : MEMORANDUM FOR THE RECORD

DATE: 18 February 1952

FROM : Assistant General Counsel

OGC Has Reviewed

SUBJECT: Letter, dated 1 August 1952, from Lindsey C. Warren, Comptroller General, United States, to Honorable Olin D. Johnson, Chairman, Committee on Post Office and Civil Service, U. S. Senate, in reference to S. 1820, entitled "A Bill to promote the rescue of civilian employees of the Federal Government who are lost in the performance of their official duties, to continue salary payments of such employees, and for other purposes."

*Copy
of
proposed
changes
attached
to
letter*

1. Except to the extent indicated, the Comptroller General strongly recommended against enactment of the proposed legislation (P. 7, last paragraph). However, before reaching this statement, the writer spelled out in detail suggested changes in wording to bring the Bill more closely in line with existing comparable legislation.

2. Subsection (a); the inclusion of part-time or intermittent employees seems appropriate. However, the last clause might be changed, in line with the definition of the Missing Persons Act, as amended, to read: "or native labor outside the continental limits of the United States or in Alaska casually hired upon an hourly or per diem basis."

3. Sections 2 and 4 would imply a conclusive presumption, quite apart from what may be the actual facts, that an employee who first is determined to be absent in a missing status continued to live until the date of receipt of evidence of his death if received not more than thirty days from the date of commencement of the missing status; and the date to which such employee would be presumed to have lived could be extended for another sixty days if no word of him had been received in the meantime. Enactment of the legislation here proposed would perpetuate a wartime aberration. It is my view that the date of death should be required to be fixed upon a basis commensurate with the realities of a particular situation and not made to depend upon the fortuitous circumstances of the date of receipt by the department concerned of evidence of death. Adoption of this view would negate the arbitrary fixing of the date of death as the date following the expiration of a thirty-day period, as would be provided by Section 4.

4. The first sentence of Section 4 does not provide for or otherwise define "official report of death". In that connection, the expression "evidence that the employee is dead" is used in Section 2.

5. Under Section 3, it would appear that a determination that the designated person is a dependent would be required before any payment could be made to such person in accord with the act of August 3, 1950, Public Law 63, 81st Congress ("An act to facilitate the settlement of the accounts of certain deceased civilian officers and employees of the Government"). Enactment of Section 3 in its present form would create

a situation whereby, if designated as a beneficiary under the act of August 3, 1950, a relative of the second, third, or fourth class would have to show dependency in order to be eligible to receive the credited pay and allowances of a missing employee, but if not so designated, would not be required to show dependency. Furthermore, it could be expected that in a great many instances a missing person will have reappeared after a comparatively brief absence and the possibility that sums paid to payees, as prescribed in Section 3, might not have been applied in accordance with the missing person's desires or necessities, particularly when the missing person had executed a conflicting allotment of pay. There also arises the question of payment to persons under legal disability and that Section 3 makes no provision for retirement deductions or income tax withholding which would be appropriate if the person be alive; nor does it provide for disposing of the credited pay and allowances in the event the missing person is deceased and there are no payees of the class enumerated.

It is suggested that the provision might be made for payments to dependents along the lines of those provided by Sections 1 and 10 of the Employees Compensation Act of September 7, 1916, as amended, 5 U.S.C. 751, 760, when an employee's death results from personal injuries sustained while in the performance of his duty, if it is felt desirable that the Government assume the obligation of immediately providing for the dependents of missing persons. In cases where the missing employee reappears, the interim payments can be charged against accrued pay, and if the employee is found to be dead, the payments may be considered as in discharge pro tanto of the Government's obligation under the 1916 act, as amended.

6. Section 5, first sentence and second sentence use expression "as an official report of death". See Paragraph 4 *supra*. Also, a provision which would authorize a change in the records to give effect to later more accurate information would not be objectionable.

7. The qualification in the latter part of the third sentence of Section 5, "except that an account shall be reopened and settled upon the basis of any date of death so fixed which is later than that used as a basis for prior settlement" is in conflict with the provisions of Section 4, which limit the period of entitlement to ninety days.

The fifth sentence appears to be surplusage since Section 2 specifically would provide for crediting pay and allowances up to the date of the receipt of evidence of death, including periods of delay within the limits of Section 4. It is recommended that the last sentence of Section 5 relating to the relief of certifying and disbursing officers be stricken in that the purpose of the statutes covering the disbursement of Government moneys is to require certifying and disbursing officers to exercise the highest degree of care and caution in the expenditure of public funds.

8. No comments on the proposed ^{penal} ~~final~~ provisions of Section 6.

9. No objection is perceived to Section 7.

10. No objection to permitting delegation of authority by head of department as provided in Section 8; however, due to changing personnel over the years, there is suggested the desirability of providing for top level administration thereof. The desirability of providing for issuance of regulations by the President for the purpose of securing as uniform administration as is possible under the circumstances is also suggested.

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